

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WEYERHAEUSER COMPANY,

Defendant.

Civil Action No. *4:06CV-61-M*

CONSENT DECREE

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I. INTRODUCTION

WHEREAS, Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), has filed, concurrently with the lodging of this Consent Decree, a Complaint against Defendant Weyerhaeuser Company seeking civil penalties and injunctive relief as a result of activities occurring at pulp and paper mills owned and operated by Weyerhaeuser Company in Hawesville, Kentucky; Bennettsville, South Carolina; and Kingsport, Tennessee under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq.; and its implementing regulations.

WHEREAS, neither this Consent Decree nor any actions taken hereunder shall constitute an admission by Weyerhaeuser Company of the occurrence of or of liability for the violations alleged in the Complaint;

WHEREAS, the United States and Weyerhaeuser Company agree to the entry of this Decree without any adjudication or admission of facts or law, except as provided in Paragraphs 1 through 3;

WHEREAS, the United States and Weyerhaeuser Company agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 42 U.S.C. § 7413(b).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395 and 42 U.S.C. § 7413(b).

3. The Complaint states a claim upon which relief may be granted.

4. Solely for the purposes of this Consent Decree and the underlying complaint, Weyerhaeuser Company waives all objections and defenses that it may have to jurisdiction of the Court and to venue in this District. Weyerhaeuser Company consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7401 et seq., and the regulations promulgated under those statutes, shall have the meanings contained therein. In addition, the following definitions shall apply to the terms contained within this Consent Decree:

- "Bennettsville Mill" means the pulp and paper mill owned and operated by Weyerhaeuser Company located at 585 Willamette Road, Bennettsville, South Carolina 29512;.
- "CAA" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.
- "Consent Decree" means this document including all attachments.
- "Date of Entry" means the date this Consent Decree is filed by the Clerk of the United States District Court for the Western District of Kentucky after being signed by the District Judge assigned to this civil action.
- "Date of Lodging" means the date this Consent Decree is received by the Clerk of the United States District Court for the Western District of Kentucky prior to signature by the District Judge assigned to this civil action.
- "Day" or "days" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" or "Working Days" shall mean a day other than a Saturday, Sunday, or

federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next Working Day.

- "Effective Date of this Consent Decree" means the Date of Entry.
- "Defendant" shall mean Weyerhaeuser Company.
- "Hawesville Mill" means the pulp and paper mill owned and operated by Weyerhaeuser Company located at 58 Wescor Road, Hawesville, Kentucky 42348.
- "Kentucky DEP" means the Kentucky Department of Environmental Protection.
- "Kentucky SIP" means the procedure for implementing and enforcing standards of performance for new sources located in Kentucky ("the Kentucky SIP") originally approved by the Administrator on May 31, 1972 (37 Fed. Reg. 10842 (1972)) and subsequently amended as specified at 40 C.F.R. §§ 52.920(c).
- "Kingsport Mill" means the pulp and paper mill owned and operated by Weyerhaeuser Company located at 100 Clinchfield Street, Kingsport, Tennessee 37660.
- "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.
- "Parties" means the United States, and Weyerhaeuser Company
- "Plaintiff" means the United States of America.
- "Section" means a portion of this Consent Decree identified by a Roman numeral.
- "Subparagraph" means a portion of a Paragraph identified by lower case letters and any subdivisions thereof.
- "Work" means all activities that Weyerhaeuser Company is required to perform under this Consent Decree.
- "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

IV. APPLICABILITY AND BINDING EFFECT

6. This Consent Decree shall apply to and be binding upon the United States, on behalf of U.S. EPA, and upon Weyerhaeuser Company and all other persons and entities as

provided in Fed. R. Civ. P. 65(d). In any action to enforce this Decree, Weyerhaeuser Company shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, employees or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof except to the extent provided in Section XIV (Force Majeure).

7. No change in ownership or corporate status relating to Weyerhaeuser Company, including, but not limited to, any transfer of assets or real or personal property, will in any way alter Weyerhaeuser Company's responsibilities under this Consent Decree, or the responsibilities of any successor or assign of Weyerhaeuser Company.

8. Weyerhaeuser Company shall give written notice and a copy of this Consent Decree to any successors in interest at least thirty (30) days prior to the transfer or conveyance of ownership, title to, easement, operation of or other interest in the Bennettsville, Hawesville, or Kingsport Mills. Defendant shall condition any sale or transfer upon agreement by each transferee and/or successor in interest to perform the injunctive relief contained in this Consent Decree and submit to the jurisdiction of this Court. Any deed, title, leasehold, or other instrument by which Weyerhaeuser Company transfers or conveys control or operation of the Bennettsville, Hawesville, or Kingsport Mills or any interest in the Bennettsville, Hawesville, or Kingsport Mills shall contain a notice that the interest being transferred or conveyed is subject to the requirements of this Consent Decree, and shall set forth the case caption, the civil action number, and the Court having jurisdiction.

9. Simultaneously with providing the notice required in Paragraph 8, Weyerhaeuser Company shall provide written notice of such transfer or conveyance to each person or entity of

the United States specified in Section XV (Notices and Submissions). In the event of any such transfer or conveyance of ownership or other interest in the Bennettsville, Hawesville, or Kingsport Mills, Weyerhaeuser Company shall not be released from the obligations or liabilities of this Consent Decree.

V. COMPLIANCE WITH THE CLEAN AIR ACT

10. At its Hawesville Mill, Weyerhaeuser Company shall comply with all applicable requirements of the Kentucky SIP currently approved by Administrator pursuant to Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, that contain emission limitations and other measures to prevent significant deterioration of air quality in attainment areas. The Number 2 Hog Fuel Boiler at the Hawesville Mill is currently covered by the following permits:

- (a) Construction Permit C-80-24 issued on April 30, 1980 (Wood Waste Boiler No. 2);
- (c) Construction Permit C-84-12 issued on January 20, 1984 (Wood Waste Dryer System); and
- (d) Operating Permit O-87-005 issued on March 20, 1987 (Wood Waste Boiler No. 2);

Pursuant to those permits, Weyerhaeuser is authorized to use wood waste and/or natural gas as fuel in the Number 2 Hog Fuel Boiler. On December 30, 2002, Weyerhaeuser applied for an amendment to its permits which would, inter alia, limit Weyerhaeuser to using only natural gas as fuel in the Number 2 Hog Fuel Boiler. Weyerhaeuser Company shall timely respond to all requests for additional information made by the Kentucky DEP in connection with the pending permit modification application. During the pendency of the permit modification application,

Weyerhaeuser shall use only natural gas as a fuel in the Number 2 Hog Fuel Boiler. After the permit is modified, Weyerhaeuser shall comply with the terms of the modified permit.

11. At its Bennettsville, Hawesville, or Kingsport Mills, Weyerhaeuser Company shall comply with all applicable requirements of the Recycling and Emissions Reduction regulations at 40 C.F.R. Part 82, Subpart F (§§ 82.150 to 82.166).

VI. DISPUTE RESOLUTION

12. Unless otherwise expressly provided in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Weyerhaeuser Company that have not been disputed in accordance with this Section.

13. Weyerhaeuser Company may invoke the dispute resolution provisions of this Section by submitting a written Notice of Dispute to U.S. EPA within thirty (30) days of receipt of notice of a decision. The Notice of Dispute shall identify the disputed decision and shall contain a concise statement of the issue or issues in dispute. If U.S. EPA has not received a Notice of Dispute by the thirtieth day after Weyerhaeuser Company's receipt of notice of a decision, that decision shall be final and not subject to dispute resolution.

14. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between U.S. EPA and Weyerhaeuser Company. The time for informal negotiations shall end thirty (30) days after Weyerhaeuser Company invokes dispute resolution, unless such time is modified by written agreement of U.S. EPA and Weyerhaeuser Company.

15. A. If the parties to the dispute cannot resolve it by informal dispute resolution, then the position advanced by the U.S. EPA shall be considered binding unless, within thirty (30) days after the end of the informal negotiations period under Paragraph 14, Weyerhaeuser Company invokes the formal dispute resolution procedures of this Section by serving on the U.S. EPA a written Statement of Position on the matter in dispute. In its Statement of Position, Weyerhaeuser Company shall describe the subject of the dispute, state its position on the dispute, and set forth in detail the basis for that position. The Statement of Position shall include the factual data, analysis, and opinions supporting Weyerhaeuser Company's position and the supporting documentation relied upon by Weyerhaeuser Company. The Statement of Position shall specify Weyerhaeuser Company's position as to whether formal dispute resolution should proceed under Paragraph 16 or Paragraph 17.

B. Within thirty (30) days after receipt of Weyerhaeuser Company's Statement of Position, the U.S. EPA will serve on Weyerhaeuser Company its Statement of Position. In its Statement of Position, the U.S. EPA shall describe the subject of the dispute, state its position on the dispute, and set forth in detail the basis for that position. The Statement of Position shall include the factual data, analysis, and opinions supporting the U.S. EPA's position and the supporting documentation relied upon by it. The Statement of Position shall specify the U.S. EPA's position as to whether formal dispute resolution should proceed under Paragraph 16 or Paragraph 17.

C. Within fifteen (15) days after receipt of the U.S. EPA's Statement of Position, Weyerhaeuser Company may submit a Reply to the U.S. EPA's Statement of Position.

D. If there is disagreement between the U.S. EPA and Weyerhaeuser Company as to whether dispute resolution should proceed under Paragraph 16 or 17, then the U.S. EPA and Weyerhaeuser Company shall follow the procedures set forth in the Paragraph determined by the U.S. EPA to be applicable. However, after a decision is issued under Paragraph 16(B) or 17(A), if Weyerhaeuser Company appeals the dispute to the Court for resolution, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 16 and 17.

16. The formal dispute resolution procedures set forth in this Paragraph shall apply to disputes pertaining to matters that are accorded review on the administrative record under applicable principles of administrative law. The provisions of this Paragraph shall apply, without limitation, to (1) disputes regarding items requiring approval by the U.S. EPA under this Consent Decree including, but not limited to, disputes regarding the adequacy or appropriateness of and procedures to implement Work, and (2) disputes regarding the selection, evaluation, implementation, performance, or adequacy of any Work.

A. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain all Statements of Position submitted pursuant to Paragraph 15, including supporting documentation, submitted pursuant to this Section. Where appropriate, U.S. EPA may allow submittal of supplemental statements of position by the parties to the dispute.

B. Division Director, Air, Pesticides & Toxics Management Division, U.S. EPA Region 4 will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph (A) above. This decision shall be binding upon Weyerhaeuser Company, subject only to the right to seek judicial review pursuant to Subparagraph (C).

C. Any administrative decision pursuant to Subparagraph (B) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Weyerhaeuser Company with the Court and served on the United States within thirty (30) days of receipt of the decision. The motion shall include a description of the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Weyerhaeuser Company's motion.

D. In judicial proceedings on any dispute governed by this Paragraph, Weyerhaeuser Company shall have the burden of demonstrating that the decision under Subparagraph (B) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of decisions under Subparagraph (B) shall be limited to the administrative record compiled pursuant to Subparagraph (A).

17. Formal dispute resolution for disputes that are not otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

A. Division Director, Air, Pesticides & Toxics Management Division, U.S. EPA Region 4 will issue a final decision resolving the dispute. Such decision shall be binding on Weyerhaeuser Company unless, within thirty (30) days of receipt of the decision, Weyerhaeuser Company files with the Court and serves on the United States a motion for judicial review of the decision setting forth the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Weyerhaeuser Company's motion.

B. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

18. Invocation of the dispute resolution procedures of this Section shall not extend, postpone or affect in any way any obligation of Weyerhaeuser Company under this Consent Decree not directly in dispute, unless U.S. EPA, in its sole discretion, agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute according to the procedures set forth in Section VIII (Stipulated Penalties). Notwithstanding any stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Weyerhaeuser Company does not prevail on a disputed issue, it shall be liable for any stipulated penalties demanded as provided in Section VIII (Stipulated Penalties).

VII. CIVIL PENALTY FOR PAST VIOLATIONS

19. No later than forty-five (45) days after entry of this Consent Decree, Weyerhaeuser Company shall pay a civil penalty of one hundred forty two thousand dollars (\$142,000). Payment shall be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, referencing USAO File Number 2005V00942; DOJ Case Number 90-5-2-1-2186/3; and the civil action case name and case number of the Western District of Kentucky. The costs of such electronic funds transfer shall be the responsibility of Weyerhaeuser Company. Payment shall be made in accordance with instructions provided to Weyerhaeuser Company by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Kentucky. Any funds received after 11:00 a.m. Eastern Time shall be credited on the next business day. Weyerhaeuser Company shall provide notice of payment, referencing USAO File Number 2005V00942; DOJ Case Number 90-5-2-1-2186/3; and the civil action case name and case number, to the United States as provided in Section XV (Notices and Submissions).

20. Weyerhaeuser Company shall pay interest on any unpaid balance of the civil penalty owed to the United States, which shall begin to accrue on the date payment is due at the rate established by the Department of the Treasury under 31 U.S.C. § 3717.

21. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

VIII. STIPULATED PENALTIES

22. Weyerhaeuser Company shall be liable to the United States for stipulated penalties of \$3,000 per day for failure to timely pay the full amount of the civil penalty as provided in Paragraph 19. Such stipulated penalty shall be in addition to any interest payable under Paragraph 20.

23. Weyerhaeuser Company shall be liable to the United States for stipulated penalties of \$3,000 per day for each day on which it burns a fuel other than natural gas in the Hog Fuel Boiler No. 2 at its Hawesville Mill.

24. Weyerhaeuser Company's liability for stipulated penalties shall begin to accrue from the first day of noncompliance with the relevant requirement of this Consent Decree, and shall continue to accrue through the date that complete performance occurs or the date complete correction of the noncompliance occurs. Stipulated penalties shall accrue regardless of whether U.S. EPA has made a demand for payment, but shall not be payable unless and until the United States makes a written demand for stipulated penalties. Any such written demand by the United States shall specify the Consent Decree violation(s) which are the basis for the demand.

25. If Weyerhaeuser Company disputes U.S. EPA's demand for stipulated penalties, Weyerhaeuser Company shall invoke the dispute resolution provisions of Section VI (Dispute Resolution) within sixty (60) days of receipt of U.S. EPA's demand for payment of stipulated penalties. Invocation of the dispute resolution provisions shall occur when Weyerhaeuser Company submits a Notice of Dispute to U.S. EPA pursuant to Paragraph 13. Unless Weyerhaeuser Company invokes the dispute resolution provisions of this Decree within 60 days of receipt of U.S. EPA's demand for payment of stipulated penalties, Weyerhaeuser Company

shall pay the stipulated penalties within sixty (60) days of receipt of U.S. EPA's written demand for payment. If stipulated penalties payable under this Decree are not paid when due, interest shall accrue on any amounts overdue to the United States from the first day after the stipulated penalties are due through the date of payment at the rate of interest established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

26. Any stipulated penalties, including accrued interest, incurred by Weyerhaeuser Company shall be paid by certified or cashier's check payable to "Treasurer, United States of America," and shall reference USAO File Number 2005V00942; DOJ Case Number 90-5-2-1-2186/3; and the civil action case number and case name of this action within the Western District of Kentucky. Checks shall be tendered to the

Financial Litigation Unit
United States Attorney's Office for the Western District of Kentucky
510 West Broadway, 10th Floor
Louisville, KY 40202
(502) 625-7077

and shall be accompanied by a letter specifying the specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. Simultaneously, a copy of the check and letter shall be sent to the United States as provided in Section XV (Notices and Submissions).

27. The invocation of dispute resolution procedures under Section VI shall not of itself extend or postpone any of Weyerhaeuser Company's obligations under this Consent Decree, but Weyerhaeuser Company's obligation to pay stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Penalties shall accrue as

provided in Paragraph 24 during any dispute resolution period, but need not be paid until the following:

A. If the dispute is resolved by agreement of the parties, accrued penalties determined to be owing shall be paid to the United States within thirty (30) days of Weyerhaeuser Company's receipt of a written demand for payment from the United States following the agreement;

B. If the dispute is referred to the Court for resolution and the United States prevails in whole or in part, Weyerhaeuser Company shall pay all accrued penalties determined by the Court to be owed to the United States within sixty (60) days of receipt of the Court's decision, except as provided in Subparagraph C, below;

C. If the District Court's decision is appealed by any party, Weyerhaeuser Company shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the escrow account to the United States or to Weyerhaeuser Company to the extent that it prevailed.

28. Except as otherwise specifically provided in this Decree, nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

29. The United States may, in its unreviewable discretion, waive payment of any portion of any stipulated penalties that may accrue under this Consent Decree.

30. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, including but not limited to additional injunctive relief or statutory penalties for Weyerhaeuser Company's violations of this Decree, the CAA.

IX. COMPLIANCE WITH APPLICABLE LAWS

31. This Consent Decree in no way relieves Weyerhaeuser Company of its responsibility to comply with all applicable federal, state, or local laws, regulations or permits. Except as provided in Section X (Effect of Settlement), compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits.

X. EFFECT OF SETTLEMENT

32. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint through the Date of Lodging this Consent Decree with the District Court. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

XI. RESERVATION OF RIGHTS

33. Except as specifically provided in Section X (Effect of Settlement), the Entry of this Consent Decree shall not limit or otherwise preclude the United States from taking additional enforcement action with regard to the Bennettsville, Hawesville, or Kingsport Mills pursuant to any federal law or regulation or federally enforceable state law, regulation, or permit condition.

34. The United States reserves the right to take or order corrective action with regard to the Bennettsville, Hawesville, or Kingsport Mills pursuant to any federal law or regulation or

federally enforceable state law, regulation, or permit condition as U.S. EPA deems necessary to protect human health or the environment. Weyerhaeuser Company reserves all of its rights and defenses with respect to such action.

35. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including Weyerhaeuser Company, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or for any other violation of law or regulation. Weyerhaeuser Company reserves all of their rights and defenses with respect to such action.

36. This Consent Decree does not limit or affect the rights of Weyerhaeuser Company or the United States against any third parties nor the rights of third parties not parties to this Consent Decree against any other parties.

37. The United States reserves any and all legal and equitable remedies, sanctions, and penalties which may be available to the United States to enforce the provisions of this Consent Decree against Weyerhaeuser Company and further reserves the right to take any other action authorized by federally enforceable state law, regulation, or permit condition to achieve or maintain compliance with this Consent Decree.

38. The failure of Weyerhaeuser Company to comply with any requirement contained in this Decree shall not excuse the obligation to comply with all of the other requirements contained herein.

39. Nothing in this Consent Decree is intended to, nor shall it be construed to, operate in any way to allege or resolve any criminal liability of Weyerhaeuser Company.

XII. NOT A PERMIT

40. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves Weyerhaeuser Company of its responsibility to comply with all applicable federal, State, and local laws and regulations.

XIII. ACCESS

41. Commencing on the Date of Entry of this Consent Decree and continuing until this Consent Decree is terminated, the United States and its representatives, including U.S. EPA and its contractors, shall have the authority to enter the Bennettsville, Hawesville, and Kingsport Mills at all reasonable times for the purposes of: (A) monitoring compliance with this Consent Decree; (B) verifying any data, test results, or information submitted in accordance with this Consent Decree; (C) obtaining copies of documents, including without limitation computer files, operating and field logs, photographs, contracts, manifests, shipping records and other relevant records, maintained or generated by Weyerhaeuser Company or its agents related to compliance with this Consent Decree; and (E) conducting any tests necessary to ensure compliance with the Consent Decree and to verify the data submitted by Weyerhaeuser Company.

42. Nothing in this Consent Decree in any way limits any right of entry or access available to U.S. EPA pursuant to applicable federal, state or local laws, regulations or permits.

XIV. FORCE MAJEURE

43. Force majeure is defined as any event arising from causes beyond the control of Weyerhaeuser Company, or of any entity controlled by Weyerhaeuser Company, including a contractor or consultant, that delays or prevents the performance of any obligation under this Consent Decree, despite the best efforts of Weyerhaeuser Company or its contractors or

consultants, to fulfill the obligation. The requirement to use "best efforts to fulfill the obligation" includes using best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the event, such that the delay is minimized to the greatest extent possible under the circumstances. Force Majeure does not include financial inability to complete the obligations of this Consent Decree.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Weyerhaeuser Company shall notify U.S. EPA Region 4 by telephone no later than ten (10) Working Days after Weyerhaeuser Company knows that the event might cause a delay. Within twenty (20) Working Days thereafter, Weyerhaeuser Company shall provide in writing to U.S. EPA an explanation and a description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Weyerhaeuser Company's rationale for attributing the delay to a force majeure event if Weyerhaeuser Company intends to assert such a claim. Weyerhaeuser Company shall include with any notice documentation supporting its claim that the delay is attributable to a force majeure event. Failure to comply with the notice provisions of this Paragraph shall constitute a waiver of Weyerhaeuser Company's right to assert a force majeure claim. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties. Weyerhaeuser Company shall take all reasonable actions to prevent or minimize any delay.

45. If U.S. EPA determines that the event constitutes a force majeure, the deadlines for completion of the obligation affected by the event shall be extended for a period of time equal to the delay resulting from such circumstances. This shall be accomplished by written approval by U.S. EPA. Such an extension does not alter the schedule for performance or completion of the obligations not affected by the force majeure event. Stipulated penalties shall not accrue during the period of any extension approved by U.S. EPA.

46. In the event that U.S. EPA and Weyerhaeuser Company cannot agree that any delay or failure has been caused by an event that constitutes a force majeure, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section VI (Dispute Resolution). In any such dispute resolution proceeding, Weyerhaeuser Company shall have the burden of demonstrating that the delay has been caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Weyerhaeuser Company complied with the requirements of Paragraph 44.

47. Weyerhaeuser Company must comply with each applicable requirement of this Decree. Compliance with any requirement of this Decree shall not excuse noncompliance with any other requirement.

XV. NOTICES AND SUBMISSIONS

48. Unless otherwise specified in this Consent Decree, whenever, under the terms of this Consent Decree, written notice is required to be given or any document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

All notices and submittals shall be considered effective upon receipt, unless otherwise specifically provided. Written notice as specified in this Paragraph shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties listed below:

As to the United States:

Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
re: DJ # 90-5-2-1-2186/3

Bill Campbell
Assistant United States Attorney
United States Attorney's Office for the Western District of Kentucky
510 West Broadway, 10th Floor
Louisville, KY 40202
502-582-5911
re: U.S. v Weyerhaeuser Company (W.D. Ky.)

Chief
Office of Air, Toxics and General Law
Office of Environmental Accountability
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
re: U.S. v Weyerhaeuser Company (W.D. Ky.)

Chief
Air and EPCRA Enforcement Branch
Air, Pesticides, and Toxics Management Division
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
re: U.S. v Weyerhaeuser Company (W.D. Ky.)

As to U.S. EPA:

Chief
Office of Air, Toxics and General Law
Office of Environmental Accountability
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
re: U.S. v Weyerhaeuser Company (W.D. Ky.)

Chief
Air and EPCRA Enforcement Branch
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61 Forsyth Street, S.W.
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re: U.S. v Weyerhaeuser Company (W.D. Ky.)

As to Weyerhaeuser Company:

Vice President/Mill Manager
Weyerhaeuser Company
Hwy 1406, 58 Wescor Rd
Hawesville KY 42348
Fax Number (270) 927-6817

XVI. COSTS

49. Each party to this Decree shall bear its own costs and attorney's fees in this action.

XVII. MODIFICATION

50. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

51. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XVIII. RETENTION OF JURISDICTION

52. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section VI (Dispute Resolution) hereof.

XIX. TERMINATION OF CONSENT DECREE

53. This Consent Decree shall terminate only after a Motion to Terminate the Consent Decree has been granted by the Court. No such motion shall be filed or considered until all the following conditions have been met:

- A. A permit which prohibits the use of any fuel other than natural gas in the Number 2 Hog Fuel Boiler at the Hawesville Mill has been issued by the Kentucky DEP;
- B. Weyerhaeuser Company has been in compliance with the terms of the Consent Decree for six (6) months preceding the date of termination; and
- D. Weyerhaeuser Company has paid all civil penalties, costs, damages, stipulated penalties, and other sums due under this Consent Decree.

Any Motion to Terminate this Consent Decree shall be filed with the Court and copies served upon the United States. The United States may file an opposition to the Motion to Terminate within ninety days of the date of service. Termination of this Consent Decree shall not affect any continuing obligations of Weyerhaeuser Company or the covenants set forth in Section X (Effect of Settlement).

XX. FINAL JUDGMENT

54. Entry of this Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

55. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Weyerhaeuser Company consents to the entry of this Decree without further notice.

56. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXII. SIGNATORIES

57. The undersigned representative of Weyerhaeuser Company and the Deputy Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Parties to this Consent Decree

SO ORDERED:

Date

District Judge
Western District of Kentucky

The United States respectfully requests that the Court not sign the Consent Decree until after the United States notifies the Court of the results of the public comment period.

FOR THE UNITED STATES OF AMERICA:

3/31/06
Date

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

March 24, 2006
Date

MICHAEL T. DONNELLAN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
(202) 514-4226

DAVID L. HUBER
United States Attorney for the
Western District of Kentucky

5/5/06
Date

BENJAMIN S. SCHECTER
Assistant United States Attorney
510 West Broadway, 10th Floor
Louisville, KY 40202
502-582-5911

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

April 6, 2006
Date

Mary Kay Lynch
Regional Counsel and Director
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

FOR WEYERHAEUSER COMPANY:

3/08/2006
Date

MARVIN COOPER
Senior Vice President
Weyerhaeuser Company